

**BROKER SELF-EVALUATION**

RE 540 (Rev. 1/04)

**COMPLIANCE CHECKLIST**

This checklist is designed to assist you in conducting a self-evaluation of your residential real estate business activities. The checklist covers the most common violations found during DRE broker office surveys. Copies of the cited code sections are attached for your reference. You should refer to your *Real Estate Law* book for the complete set of laws and regulations administered by the Department of Real Estate which affect your licensed real estate operation.

Before you begin answering the questions on this checklist, you should review the Department's Licensing records. The following information is available on DRE's Web site **www.dre.ca.gov** or may be requested from any District Office: current main address, branch office locations, authorized fictitious business names, corporate affiliations, and list of salespersons sponsored under your broker's license.

**Licensing Compliance**

1. Do you have a branch office license for each location from which you conduct business? (B&P 10163) ..... ☐ Yes ☐ No  
*You may only operate your business from the main office address printed on your license certificate unless you have a branch office license for other locations.*
2. Are you operating with an unlawful fictitious business name? (Reg. 2731) ..... ☐ Yes ☐ No  
*You may only use a fictitious business name if it is approved by DRE. The fictitious business name must appear on the face of a license in your possession as issued by the Department.*
3. Are you employing salespersons without DRE notification? (Reg. 2752) ..... ☐ Yes ☐ No  
*A broker has five days to notify DRE whenever a salesperson is hired or terminated.*
4. Are you employing expired/unlicensed salespersons? (B&P 10137) ..... ☐ Yes ☐ No  
*A broker may not pay an expired licensee or an unlicensed person for an act requiring a license. (B&P 10131) You should keep current original licenses for all salespersons licensed to you (B&P 10160) and consider setting up a system to monitor expiration dates.*
5. Are you employing salespersons without contracts? (Reg. 2726) ..... ☐ Yes ☐ No  
*Written employment agreements are required for each salesperson or broker working for you as sales agents. Both you and the sales agent should sign, date and retain a copy of this agreement for three years from the date employment is terminated*

**Trust Account Compliance**

1. Is a record maintained of funds not placed in trust account? (Reg. 2831) ..... ☐ Yes ☐ No  
*Uncashed checks made out to escrow companies, appraisers, sellers, etc. are considered trust funds and you must keep records of all trust funds not placed in your trust account as specified in the Regulations.*
2. Is a record maintained of funds deposited in trust account? (Reg. 2831) ..... ☐ Yes ☐ No  
*A general trust fund control record must be maintained of all trust funds placed in your trust account. These records must contain the information specified in this Regulation.*
3. Are separate records maintained? (Reg. 2831.1) ..... ☐ Yes ☐ No  
*In addition to the general trust fund control records required by Regulation 2831, you must keep separate trust account records for each beneficiary or transaction. By adding the total of all these separate records, your total should equal the balance of your general trust fund control record. A separate record should be maintained for any broker funds (not to exceed \$200) required to service the account.*

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|-----|--|------------------------------|-----------------------------|
| 4.  | Are trust funds being held too long? (Reg. 2832) .....<br><i>Regulations normally require that you place funds accepted on behalf of another person into the hands of that person, into a neutral escrow depository or into your trust account no later than three business days following the receipt of the funds.</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5.  | Are there unexplained overages in the trust account? (Reg. 2831.1) .....<br><i>You must keep a separate record of these trust account overages and the funds must remain in a trust account and be reconciled on a monthly basis.</i>  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6.  | Is the trust account a designated trust account in your name as trustee? (Reg. 2832) .....<br><i>A trust account may be in the name of your fictitious business name as trustee if you are the holder of a license bearing the fictitious name.</i>  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7.  | Is the trust account interest bearing? (B&P 10145) .....<br><i>You may not keep interest earned on trust funds and must have written authorization from the owner of the trust funds to set up an interest bearing trust account. There must be a separate interest bearing account set up for each beneficiary.</i>     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8.  | Unlawful signatory to trust account? (Reg. 2834) .....<br><i>In order for someone to sign on your trust account, they must be a salesperson licensed to you, a broker working under contract with you or an unlicensed person who is bonded to the maximum amount of trust funds he/she has access to.</i>               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9.  | Do you place general or payroll account funds in an account with trust funds? (B&P 10176(e)) .....<br><i>This is commingling and must be avoided.</i>  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10. | Do you ever get NSF trust account checks? .....<br><i>This is an obvious red flag that there is trouble with the trust account.</i>  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. | Do you perform monthly reconciliation of trust account records.? (Reg. 2831.2) .....<br><i>Once a month, you must be sure that the total of all separate beneficiary records balances with both your general trust account control records and with your trust account bank statement.</i>                               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

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### Supervision

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|----|--|------------------------------|-----------------------------|
| 1. | Do you exercise reasonable supervision over the activities of your salespersons? (Reg. 2725) .....<br><i>Reasonable supervision includes the establishment of policies and procedures to (1) review and manage all transactions requiring a license, (2) documents which may have a material effect on the parties, (3) filing and maintaining these documents, (4) handling of trust funds, (5) advertising, (6) familiarizing salespersons with laws relating to prohibition of discrimination, and (7) regular reports of activities of salespersons.</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. | Can you describe your system to monitor compliance with established policies and procedures? (Reg. 2725) .....<br><i>A broker may use the services of brokers and salespersons to assist in supervision, as long as the broker does not relinquish overall responsibility.</i>   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

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### Required Disclosures

- |    |   |                              |                             |
|----|---|------------------------------|-----------------------------|
| 1. | Do you keep receipts for delivery of pest control documents? (Reg. 2905) .....<br><i>Records should be kept as evidence that you delivered pest control inspection reports, certifications, completion notices or otherwise informed the buyer of his/her rights under Civil Code Section 1099.</i> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. | Are definite termination dates included in exclusive listings? (B&P 10176(f)) .....<br><i>You cannot claim, demand or receive a commission if your exclusive listing does not contain a definite termination date.</i>  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
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3. Are negotiability of commission disclosures provided? (B&P 10147.5) ..... ☐ Yes ☐ No  
*Any agreement that establishes your right to compensation for licensed acts must contain a notice that commission rates are negotiable and not established by law.*
4. Are Real Estate Transfer Disclosure Statements provided? (B&P 10176.5) ..... ☐ Yes ☐ No  
*Willful or repeated failure to provide buyers with a Real Estate Transfer Disclosure Statement is a violation of law.*

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**Record Keeping**

1. Do you keep all listings, deposit receipts, canceled checks, trust account records, employment agreements, and other material documents obtained or executed in connection with your real estate transactions for three years? ..... ☐ Yes ☐ No  
*These records are to be retained for three years and made available to the Commissioner for inspection and copying upon request.*
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# SALES TRANSACTION WORKSHEET

This worksheet is for your use in checking individual files for compliance with DRE laws and regulations. You may duplicate this form and use it on as many transaction files as you wish. We recommend that you review at least three transactions.

BUYER	BUYER'S PHONE	BUYER'S AGENT
SELLER	SELLER'S PHONE	SELLER'S AGENT
PROPERTY ADDRESS		
DATE OFFER MADE	DATE OFFER ACCEPTED	DATE OF COMMUNICATION OF ACCEPTANCE
DEPOSIT AMOUNT \$	DEPOSIT FORM <input type="checkbox"/> CASH <input type="checkbox"/> PERSONAL CHECK <input type="checkbox"/> NOTE <input type="checkbox"/> CASHIER'S CHECK	
WHO WAS DEPOSIT CHECK MADE PAYABLE TO?		WAS PERMISSION GIVEN TO HOLD FUNDS? (REG. 2832)
BY WHAT DATE WAS MONEY TO BE DEPOSITED/ FORWARDED?	WHO HELD FUNDS?	DID BROKER/MANAGER INITIAL AND DATE SALESPERSON'S DOCUMENTS? (REG. 2725)

## Review of Trust Fund Records

- Date trust funds forwarded/deposited: \_\_\_\_\_
- Where were trust funds forward/deposited?  
\_\_\_\_\_
- Was record made for funds not placed in trust account? (Reg. 2831(a)(6)) ..... ☐ Yes    ☐ No  
*OR*  
 Was record made for funds placed in the trust account? (Reg. 2831) ..... ☐ Yes    ☐ No
- Was a separate record made? (Reg. 2831.1) ..... ☐ Yes    ☐ No
- Were trust funds improperly handled? (various Regs.) ..... ☐ Yes    ☐ No
- Is pest control documentation OK? (Reg. 2905) ..... ☐ Yes    ☐ No
- Were Real Estate Transfer Disclosure Statements delivered? (§10176.5 B&P; §1102 et seq. CC) ..... ☐ Yes    ☐ No  
 When were they delivered? ..... \_\_\_\_\_
- Does the agreement have a definite termination date? (§10176(f) B&P) ..... ☐ Yes    ☐ No
- Was negotiability of commission disclosed? (§10147.5 B&P) ..... ☐ Yes    ☐ No

**BUSINESS AND PROFESSIONS CODE****Broker Defined**

**10131.** A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.
- (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.
- (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.
- (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.
- (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

**Unlawful Employment or Payment of Compensation - Penalty**

**10137.** It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesman licensed under the broker employing or compensating him; provided, however, that a licensed real estate broker may pay a commission to a broker of another State.

No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed.

It is unlawful for any licensed real estate salesman to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

**Handling of Trust Funds - Interest-Bearing Accounts - Neutral Escrow Defined****10145.**

- (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.
- (2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:
  - (A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.
  - (B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.
  - (C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).
  - (D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.
  - (E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

- (F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.
- (G) A licensed residential mortgage lender or servicer acting under the authority of that license.
- (H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.
- (3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.
- (b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.
- (c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.
- (d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:
- (1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.
  - (2) All of the funds in the account are covered by insurance provided by an agency of the United States.
  - (3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.
  - (4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.
- (5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.
- (6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.
- (e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.
- (f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.
- (g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.
- (h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.
- (i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

### ***Negotiability of Real Estate Commissions - Notice Requirement***

#### **10147.5.**

- (a) Any printed or form agreement which initially establishes, or is intended to establish, or alters the terms of any agreement which previously established a right to compensation to be paid to a real estate licensee for the sale of residential real property containing not more than four residential units, or for the sale of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

*Notice:* The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

- (b) The amount or rate of compensation shall not be printed in any such agreement.
- (c) Nothing in this section shall affect the validity of a transfer of title to real property.

- (d) As used in this section, “alters the terms of any agreement which previously established a right to compensation” means an increase in the rate of compensation, or the amount of compensation if initially established as a flat fee, from the agreement which previously established a right to compensation.

### **Possession and Inspection of Salesman’s License**

**10160.** The real estate salesman’s license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative.

### **Branch Offices**

**10163.** If the applicant for a real estate broker’s license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license.

### **Grounds for Revocation or Suspension**

**10176.** The commissioner may, upon his own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade or induce.
- (c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salesmen.
- (d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.
- (e) Commingling with his own money or property the money or other property of others which is received and held by him.
- (f) Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where such agreement does not contain a definite, specified date of final and complete termination.
- (g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of such licensee the full amount of such licensee’s compensation, commission or profit under any agreement authorizing or employing such licensee to

do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of such agreement, whether evidenced by documents in an escrow or by any other or different procedure.

- (h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing such licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when such licensee prior to or coincident with election to exercise such option to purchase reveals in writing to the employer the full amount of licensee’s profit and obtains the written consent of the employer approving the amount of such profit.
- (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.
- (j) Obtaining the signature of a prospective purchaser to an agreement which provides that such prospective purchaser shall either transact the purchasing, leasing, renting or exchanging of a business opportunity property through the broker obtaining such signature, or pay a compensation to such broker if such property is purchased, leased, rented or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer such property for sale, lease, exchange or rent.

### **Real Estate Transfer Disclosure Statement Violations**

#### **10176.5.**

- (a) The commissioner may, upon his or her own motion, and shall upon receiving a verified complaint in writing from any person, investigate an alleged violation of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code by any real estate licensee within this state. The commissioner may suspend or revoke a licensee’s license if the licensee acting under the license has willfully or repeatedly violated any of the provisions of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code.
- (b) Notwithstanding any other provision of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, and in lieu of any other civil remedy, subdivision (a) of this section is the only remedy available for violations of Section 1102.6b of the Civil Code by any real estate licensee within this state.

## COMMISSIONER'S REGULATIONS

### **2725. Broker Supervision.**

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

### **2726. Broker-Salesman Relationship Agreements.**

Every real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.

### **2731. Use of False or Fictitious Name.**

- (a) A broker shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the broker is the holder of a license bearing the fictitious name.
- (b) When engaging in any activity for which a license is required under the Real Estate Law, a salesperson may include a nickname on a business card, stationary or advertisement if each of the following conditions are satisfied:
  - (1) The salesperson's name, as it appears in the records of the Department, is clearly set forth on the business card, stationary or advertisement.
  - (2) The salesperson's employing broker's name appears on the business card, stationary or advertising in at least 8-point type.

- (3) The salesperson's license number appears on the business card, stationary or advertising in at least 8-point type.
- (4) The nickname is highlighted on the business card, stationary or advertising in quotes to indicate that it is not the salesperson's name as it appear in the records of the Department.
- (c) The Department shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code.
- (d) The commissioner may refuse to issue a license bearing a fictitious name to a broker if the fictitious name:
  - (1) Is misleading or would constitute false advertising.
  - (2) Implies a partnership or corporation when a partnership or corporation does not exist in fact.
  - (3) Includes the name of a real estate salesperson.
  - (4) Constitutes a violation of the provisions of Sections 17910, 17910.5, 17915 or 17917 of the Code.
  - (5) Is the name formerly used by a licensee whose license has since been revoked.

### **2752. Notice of Change of Broker.**

Whenever a real estate salesperson enters the employ of a real estate broker, the broker shall notify the commissioner of that fact within five days. This notification shall be given on a form prepared by the Department and shall be signed by the broker and the salesperson. The form of notification shall provide for the furnishing of at least the following information:

- (1) Name and business address of the broker.
- (2) Mailing address of the salesperson, if different from the business address.
- (3) Date when the salesperson entered the employ of the broker.
- (4) Certification by the salesperson that he has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.
- (5) Name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.
- (6) Certification by the salesperson that the predecessor broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor broker to give notice of the termination of the broker/salesperson relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the commissioner not more than ten days following such termination.



### **2830.1. Interest-Bearing Trust Account**

A real estate broker, when acting as agent for a financial institution as beneficiary of a loan, may deposit and maintain funds from or for the account of an obligor for the future payment of property taxes, assessments or insurance relating to real property containing only a one-to-four family residence, in an interest-bearing trust account in a bank or savings and loan association in order to pay interest to the obligor in accordance with Section 2954.8 of the Civil Code if the following requirements are met:

- (a) The account is in the name of the broker as trustee.
- (b) All of the funds in the account are covered by insurance provided by an agency of the federal government.
- (c) All of the funds in the account are funds held in trust by the broker for others.
- (d) The broker discloses to the obligor how interest will be calculated and paid.
- (e) No interest earned on the funds shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

### **2831. Trust Fund Records To Be Maintained.**

- (a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:
  - (1) Date trust funds received.
  - (2) From whom trust funds received.
  - (3) Amount received.
  - (4) With respect to funds deposited in an account, date of said deposit.
  - (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
  - (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
  - (7) Daily balance of said account.
- (b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).
- (c) Maintenance of journals of account cash receipts and disbursements, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles, shall constitute compliance with subdivision (a) provided that such journals, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

- (d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.
- (e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account for the receipt and distribution of such checks. A broker shall retain for three years copies of receipts issued or obtained in connection with the receipt and distribution of such checks.

### **2831.1. Separate Record for Each Beneficiary or Transaction.**

- (a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. This record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:
  - (1) Date of deposit.
  - (2) Amount of deposit.
  - (3) Date of each related disbursement.
  - (4) Check number of each related disbursement.
  - (5) Amount of each related disbursement.
  - (6) If applicable, dates and amounts of interest earned and credited to the account.
  - (7) Balance after posting transactions on any date.
- (b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.

### **2831.2 Trust Account Reconciliation**

The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.

**2832. Trust Fund Handling.**

- (a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.
- (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.
- (c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if
  - (1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and
  - (2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.
- (d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.
- (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.

**2834. Trust Account Withdrawals.**

- (a) Withdrawals may be made from a trust fund account of an individual broker only upon the signature of the broker or one or more of the following persons if specifically authorized in writing by the broker:
  - (1) a salesperson licensed to the broker.

- (2) a person licensed as a broker who has entered into a written agreement pursuant to Section 2726 with the broker.
- (3) an unlicensed employee of the broker with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.
- (b) Withdrawals may be made from the trust fund account of a corporate broker only upon the signature of:
  - (1) an officer through whom the corporation is licensed pursuant to Section 10158 or 10211 of the Code; or
  - (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision (a) above, provided that specific authorization in writing is given by the officer through whom the corporation is licensed and that the officer is an authorized signatory of the trust fund account.
- (c) An arrangement under which a person enumerated in paragraph (1), (2) or (3) of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from responsibility or liability as provided by law in handling trust funds in the broker's custody.

**2905. Pest Control Documentation.**

In a real estate transaction subject to the provisions of Section 1099 of the Civil Code, the real estate broker acting as agent for the seller in the transaction shall effect delivery of the inspection report, certification and the notice of work completed, if any, to the transferee in accordance with said section.

If more than one real estate broker licensee is acting as an agent of the transferor in the transaction, the broker who has obtained the offer made by the transferee shall effect delivery of the required documents to the transferee unless the transferor has given written directions to another real estate broker licensee acting as agent of the transferor in the transaction to effect delivery.

If the agent cannot obtain the required documents to deliver to the transferee and does not have written assurance from the transferee that all of said documents have been received, the agent shall advise the transferee in writing of the transferee's rights under Section 1099.

The broker shall maintain a record of the action taken to effect compliance with this regulation in accordance with Section 10148 of the Business and Professions Code.